

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)	
)	
v .)	CIVIL ACTION NO. 2:05cv654-F
)	
ALBERT CARTER, JR.)	

O R D E R

On July 18, 2006, the defendant filed a motion (doc. # 11) requesting that I recuse in this case because I was the judge who issued the complaint which was the basis of his allegedly unconstitutional arrest. In his 28 U.S.C. § 2254 motion Carter frames the claim in the following manner:

The Court was without jurisdiction to render the judgment or impose sentence.

February 20, 2003 A complaint was file (sic) Case No. M03-12-N that the defendant Albert Carter, possess a firearm, that is a .22 caliber revolver, in and affecting commerce after having been convicted of solicitation - murder, for which he was sentence to a term of imprisonment (sic) for more than one year under the laws of the State of Alabama, that was A frivolous complaint, on February 26, 2003 said defendant was indicted for felon possess firearm after being convicted of attempted murder that defendant was denied equal protection and due process and was left without a proper charge, and this Court is without jurisdiction in this case.

Pursuant to 28 U.S.C. § 455(a) Carter alleges that my impartiality might reasonably be questioned because as the judge who issued the complaint and concomitant arrest warrant I am unable to impartially review my own actions. Carter's motion to recuse is frivolous. All of the actions taken by me with respect to Carter were taken solely in my judicial capacity as a United States Magistrate Judge. To disqualify a judge

under § 455(a), bias “must stem from extrajudicial sources, unless the judge's acts demonstrate such pervasive bias and prejudice that it unfairly prejudices one of the parties.” *United States v. Bailey*, 175 F.3d 966, 968 (11th Cir.1999). The mere fact that I have ruled against Carter in prior matters before the court does not demonstrate any prejudice sufficient to support disqualification. Accordingly, it is

ORDERED that the motion to recuse be and is hereby DENIED.

Done this 19th day of July, 2006.

/s/Charles S. Coody
CHARLES S. COODY
CHIEF UNITED STATES MAGISTRATE JUDGE